



# P E N N S Y L V A N I A LANDOWNER

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## Defenders Represent PA Farmer against EPA

After a long-fought battle against the government to obtain compensation for the taking of their farmland, Robert Brace may finally see his day in court before the end of this year.

Mr. Brace's battle with the government began in 1987 when the U.S. Environmental Protection Agency and the U.S. Corps of Engineers told Mr. Brace he could no longer farm on part of his Erie County land because it was considered wetlands. This was land that Mr. Brace had purchased in December of 1975 from his father and which he intended to use to continue and expand his family farming business. Although the soil on this land was highly productive for farming, it was considered to be poorly drained and in need of drainage to make it suitable for production of cabbage and potatoes. Thus, with the assistance and funding of another federal governmental agency, the U.S. Department of Agriculture, he arranged for and began excavation and burying of plastic tubing, "drainage tile," to improve soil conditions for row crops. This was a common practice in Erie County during that time period and was encouraged by the USDA.

After Mr. Brace had expended considerable sums to install this drainage system and maintain it so that the land would be productive for crops, the EPA told Mr. Brace he was in violation of the Clean Water Act and brought an enforcement

lawsuit against him in a Pennsylvania federal district court. Although the district court in 1993 agreed with Mr. Brace that his activities should be considered "normal farming practices," which are exempt from the Clean Water Act's provisions, the Third Circuit Court of Appeals reversed that decision. After the Supreme Court denied his petition for certiorari, Mr. Brace was forced to enter into a consent decree in which he agreed to remove a major part of the drainage system he had installed on his land and restore thirty acres of his land to unusable and undevelopable wetlands "in perpetuity" according to a restoration plan drafted by EPA. He was also forced to pay a \$10,000 fine.

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the present lawsuit  
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his land in 1998.*

Mr. Brace then filed the present lawsuit in order to seek compensation for the taking of his land in 1998. However, before he could obtain his day in court, he was forced to face numerous motions filed by the federal government to try to keep the case

from going to trial. Since 1998, the government has filed two motions for summary judgment, one in 2000 and one in 2001, alleging that it had not taken Mr. Brace's land. Both those motions were denied. In 2002, the government filed a motion to dismiss, claiming Mr. Brace had failed to state a claim, and that motion was also denied. With no more legal avenues for the government to delay trial of the case, the parties proceeded with identification of their witnesses and discovery.

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